

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

BONHOMME INVESTMENT PARTNERS, LLC,)	
)	
DONALD M. DAVIS and)	Case No. 4:13-CV-00475 CDP
)	
RICHARD C. LEHMAN,)	
)	
Plaintiffs,)	
)	
v.)	
)	
SHAUN HAYES, <i>et al.</i> ,)	
)	
Defendants.)	

**PLAINTIFFS' MOTION TO COMPEL
AS TO DEFENDANT SHAUN HAYES**

COME NOW Plaintiffs Bonhomme Investment Partners, LLC, Donald M. Davis and Richard C. Lehman (collectively, "Plaintiffs"), by and through their undersigned attorneys, and for their Motion to Compel (the "Motion") as to Defendant Shaun Hayes ("Hayes"), pursuant to Federal Rules of Civil Procedure 26, 33, 34 and 37, Local Rule 37-3.04, and other applicable law, state as follows:

Procedural History

1. On April 22, 2013 Plaintiffs filed their Amended Complaint herein (the "Complaint"). [DE #10] In the Complaint, Plaintiffs assert claims against Hayes (among others) as follows:

Count I	Federal Securities Fraud
Count II	Missouri Securities Fraud
Count IV	Common Law Fraud
Count V	Negligent Misrepresentation

2. On January 24, 2014 Plaintiffs properly served on Hayes their First Set of Interrogatories Directed to Defendant Shaun Hayes (the “Interrogatories”). A true and correct copy of the Interrogatories is attached hereto as Exhibit 1 and incorporated herein by reference.

3. On January 24, 2014 Plaintiffs properly served on Hayes their First Request for Production of Documents Directed to Defendant Shaun Hayes (the “Request for Production”). A true and correct copy of the Request for Production is attached hereto as Exhibit 2 and incorporated herein by reference.

4. Hayes has failed to answer the Interrogatories, and the time within which to object or answer has long since passed.

5. Hayes has failed to respond to the Request for production or produce any of the documents requested therein, and the time within which to object or respond and produce documents has long since passed.

6. The undersigned counsel for Plaintiffs hereby certifies that he has conferred in good faith by telephone with counsel for Hayes (William Darmstaedter) regarding this discovery dispute, that said counsel for Hayes has advised Plaintiffs’ counsel on multiple occasions that Hayes would answer the Interrogatories and respond to the Request for Production, but Hayes has not so answered or responded. The latest telephone conference occurred on or about July 23, 2014

Argument

Rule 37 (a) provides that a party may move for an order compelling discovery. Fed. R. Civ. P. 37 (a) The Rule specifically provides that a party may move to compel discovery if another party fails to answer an interrogatory submitted under Rule 33, or fails to respond to a request for production under Rule 34. *Id.* R. 37 (a) (3) (B) (iii and iv) Further, a court

determining a Rule 37 (a) motion must award to a prevailing moving party that moving party's reasonable expenses, including attorneys' fees. *Id.* R. 37 (a) (5) (A) Further still, where a party has failed to answer interrogatories or has failed to respond to a request for production, the court may sanction the non-responding party. *Id.* R. 37 (d) (1; 3); R. 37 (b) (2) (A) (i-vi)

Here, Hayes has simply refused to answer the Interrogatories or respond to the Request for Production. Harsh sanctions are entirely appropriate for this blatant, unjustified disregard of this Court's discovery procedures.

WHEREFORE, based on the foregoing, Plaintiffs respectfully request that this Court grant the Motion, strike Hayes' pleadings, including without limitation his answer to the Complaint, render a default judgment in favor of each Plaintiff and against Hayes as to liability, reserving for a subsequent proceeding the amount of each Plaintiff's damages, award Plaintiffs their reasonable fees, costs and expenses, including attorneys' fees, incurred in prosecuting this Motion, and grant such other and further relief as is just and proper.

Dated: August 12, 2014

Respectfully submitted,

/s/ Terry L. Pabst

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 12, 2014 a true and correct copy of the foregoing pleading was filed electronically to be served via operation of the Court's CM/ECF system on all parties and attorneys of record.

/s/ Terry L. Pabst